

NAJAM, Judge

STATEMENT OF THE CASE

Steve Magness appeals from the trial court's revocation of his probation. Magness raises two issues for our review:

1. Whether the State presented sufficient evidence to support his probation revocation.
2. Whether the trial court abused its discretion when it refused to consider the deposition of Nicole Rains.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 29, 2007, Magness pleaded guilty to charges of Invasion of Privacy, as a Class A misdemeanor, and Conspiracy to Commit Obstruction of Justice, a Class D felony. The trial court accepted Magness' plea and entered a sentencing order in which a portion of Magness' sentence was suspended to probation. The trial court also entered a No Contact Order, which stated:

THE DEFENDANT IS ORDERED TO HAVE NO CONTACT WITH: David Hess, Michael Hess in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record, while on probation. This includes, but is not limited to, acts of harassment, stalking, intimidation, threats, and physical force of any kind.

Appellant's App. at 37.

On June 18, 2008, the State filed its notice of probation violation against Magness. The State alleged that Magness had violated the No Contact Order by having had contact with David Hess. On July 11, the court held a hearing. At that hearing, Hess testified as follows:

Q [by the State]: Mr. Hess, did Mr. Magness come into contact with you during the last several months?

A Yes.

Q When was the first time he came into contact with you?

A April 1st of this year.

Q And what type of contact was made?

A Phone calls to my house and driving up to the end of my driveway and squealing his tires.

* * *

Q . . . About what time did Mr. Magness arrive there?

A It was late, probably 11:00 P.M.

Q And where were you when Mr. Magness showed up there?

A I was in the living room.

* * *

Q How did you see Mr. Magness from your living room?

A Well, I went to my front door and looked out the window and saw him out there in his truck squealing his tires at the end of my driveway.

* * *

Q How did you know it was him?

A I could see him barely. There's a streetlight right above where he was.

Q How long was Mr. Magness outside your house?

A Five minutes.

* * *

Q When was the next time you came into contact with Mr. Magness?

A The next time that I can put a date on was May 22nd. He called my house from several places, including his own home, which appeared on my caller [I.D.¹]

* * *

Q Okay, so what did you do after you observed that on your caller [I.D.]?

A I went down to the police station the following morning to make a report.

* * *

Q Okay. now, was there a time when you came into contact with Mr. Magness again?

A Yeah, June 4th. About 10:00, 10:30 in the morning, I was working at home at my table, my dining room table. There was a knock at the door. I went to the front door and observed Mr. Magness sitting across the street looking at my house. There was nobody at the door.

* * *

Q Did the defendant say anything to you?

A No.

Q What did you do next?

A I got my camera.

Q And what did you do then?

A Well, I pointed it at him and he put his hood up and walked away.

...

* * *

Q How far was Magness from the house?

¹ The number that appeared on Hess' caller I.D. was identified as "Lottie Magness." Transcript at 26.

A About maybe 30, 40 yards. He was right across the street.

Q Was there any other communication[] that day?

A Yeah. That evening, while waiting in line at a gas station about a block from my house, I noticed him at the door of the gas station. He saw me, turned around and walked out and then came right back in.

Q Did he say anything to you?

A Yes. He walked up to me and said you should have finished me the last time.

Q What did he mean by—what do you take that as—the last time?

A I assume he was referring to an incident where I was forced to shoot him last year on my property.

Q Also a violation of a no contact order?

A At the time, yes.

* * *

Q Did he say anything else to you?

A Yeah, he said shoot me, pussy, you're a pussy, several times.

Q What happened next?

A He left the store and outside the store he was out there and he continued taunting me saying I was a pussy and just shoot him.

Q Did you inform anyone at that time?

A The store called the police . . .

Q So what happened after the Gas America incident?

A Went home and observed him in my backyard.

Q What time was that?

A About 6:30 or so. He turned around, jumped the neighbor's fence and disappeared into the neighborhood

* * *

Q Now, have there also been telephone calls to your employer?

A Yes.

Q . . . What type of communication has been made at your employment?

A Well, twice during the month of June—the first incident I don't have a date for—he contacted my boss and attempted to get me fired. The second incident was the 18th, I believe. He left a lengthy voice mail which exists on the servers at my work.

Q Have you had an opportunity to listen to that voice mail message?

A Yes, I have.

Q And are you, in fact, familiar with the defendant's voice?

A Yes.

Q And are you able to say positively it's the defendant's voice on that voice mail message?

A Without a doubt.

Q What did the defendant say in that voice mail message?

A He said that I was a drug user and they should drug test me and I should be fired and a whole lot of other things

Transcript at 23-31.

Following Hess' testimony, Magness sought to admit the deposition of Nicole Rains, his former girlfriend and Hess' daughter, that was taken on August 6, 2007, in relation to the original charges against Magness. Magness argued that Rains' deposition demonstrated that Hess wanted "to get [Magness] in trouble because [Hess] wants

[Magness] out of the picture, meaning . . . the possibility of [a] romantic relationship.” Id. at 40. The trial court denied Magness’ request to admit Rains’ deposition, stating: “I haven’t heard anything from that deposition or about that deposition that makes it relevant to the issues in this case You’ve already gone after [Hess’] motive in other ways. That deposition is pretty far afield from what’s at issue here” Id. at 41-42.

At the end of the hearing, the trial court found:

I find that you violated the order, did so on April 1st, 2008, by going to the residence. Whether you actually had any personal contact with Mr. Hess or not, it’s still a violation for him to be there. Secondly, there was a direct contact violation on June 4th, 2008, at the gas station, the reason I found that he violated the no contact order. Probation will be revoked, defendant sentenced to the balance of his time, less credit, 550 days less 22 actual days

Id. at 50-51. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficient Evidence

Magness first contends that the State presented insufficient evidence to support the revocation of his probation. As this court has often stated:

A probation revocation proceeding is in the nature of a civil proceeding, and, therefore, the alleged violation need be proved only by a preponderance of the evidence. J.J.C. v. State, 792 N.E.2d 85, 88 (Ind. Ct. App. 2003). Violation of a single condition of probation is sufficient to revoke probation. Id. As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses. Id. We look only to the evidence which supports the judgment and any reasonable inferences flowing therefrom. Id. If there is substantial evidence of probative value to support the trial court’s decision that the probationer committed any violation, revocation of probation is appropriate. Id.

Richardson v. State, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008) (quoting T.W. v. State, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007), trans. denied).

Here, Magness argues that the State’s evidence against him “is of an insubstantial quality and should not have resulted in the violation of his probation.” Appellant’s Brief at 6. Specifically, Magness argues the following: (1) Hess could “barely” see Magness while Magness was in Hess’ driveway squealing his tires; (2) Hess did not know if the phone number on his caller I.D. was associated with Magness; (3) Magness being thirty to forty yards away from Hess—when Hess answered his door and found no one around, but did see Magness across the street staring at him—was not in violation of the No Contact Order; (4) Hess’ testimony regarding the interaction with Magness at the gas station on June 4th was “simply not credible,” id. at 7; (5) Hess’ testimony that he saw Magness in his backyard “raises questions about Hess’ credibility,” id.; and (6) Hess did not give proper foundation in his testimony for being able to identify Magness’ voice on Hess’ employer’s voice mail. Magness’ arguments on this issue are simply requests for this court to reweigh the evidence against him, which we will not do. See Richardson, 890 N.E.2d at 768 (quoting T.W., 864 N.E.2d at 364).

Issue Two: Rains’ Deposition

Magness also asserts that the trial court did not properly consider “evidence of bias contained in the deposition” of Nicole Rains, Hess’ daughter and Magness’ former girlfriend. Appellant’s Brief at 8. A trial court’s decision to admit or exclude evidence is reviewed for an abuse of discretion. McVey v. State, 863 N.E.2d 434, 440 (Ind. Ct. App. 2007), trans. denied. An abuse of discretion occurs if a trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

The trial court did not abuse its discretion in not admitting Rains' deposition. Rains' deposition was more than eleven-months old, and the portion identified by Magness is hardly unequivocal. When asked by Magness' attorney whether Rains' thought it was "possible that [Hess] is trying to get [Magness] in trouble because he wants to get him out of the picture," Rains responded, "[a]nything's possible." Def. Exh. A. at 20. And, as the trial court stated, Magness had "gone after [Hess'] motive in other ways." See transcript at 32-42. Finally, even if the trial court had admitted Rains' deposition, it would have been within the court's discretion to give that deposition no weight. See Richardson, 890 N.E.2d at 768 (quoting T.W., 864 N.E.2d at 364). Accordingly, the court's decision to exclude Rains' deposition was not an abuse of the court's discretion.

Conclusion

There is substantial evidence of probative value to support the trial court's decision that Magness committed a violation of his probation. In addition, the trial court did not abuse its discretion by not admitting Rains' deposition into evidence. Hence, we must affirm the court's revocation of Magness' probation.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.